

This matter concerns the imposition of a transfer penalty due to checks and withdrawals totaling \$33,490.03. Petitioner entered a nursing facility in October 2012. As Petitioner was found otherwise eligible on December 1, 2012, she had a penalty of four months and eight days or until April 8, 2013.

Medicaid law contains a presumption that any transfer for less than fair market value during the look-back period was made for the purpose of establishing Medicaid eligibility. See E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340 (App. Div. 2010); N.J.A.C. 10:71-4.10(i). The applicant, "may rebut the presumption that assets were transferred to establish Medicaid eligibility by presenting convincing evidence that the assets were transferred exclusively (that is, solely) for some other purpose." N.J.A.C. 10:71-4.10(j). The burden of proof in rebutting this presumption is on the applicant. Ibid. The regulations also provide that, "if the applicant had some other purpose for transferring the asset, but establishing Medicaid eligibility appears to have been a factor in his or her decision to transfer, the presumption shall not be considered successfully rebutted." N.J.A.C. 10:71-4.10(i)2.

Petitioner claimed that some of the transferred funds were meant to help her great-niece with college expenses. However, as the ALJ noted the transfers occurred within six months of entering the nursing home and Petitioner failed to rebut the presumption that the transfers were for Medicaid purposes. The Initial Decision makes a similar finding with regard to a \$817.90 purchase from Verizon on December 5, 2012. I concur with these findings.

The Initial Decision went on to find that two withdrawals of \$3,500 in February 14, 2011 and \$5,000 in September 12, 2011 were "the ebb and flow of petitioner's investment account during 2011" and should not be treated as a transfer of assets. ID

at 5-6. There was a deposit of \$8,000 on June 13, 2011 that the Initial Decision indicates is a return of the withdrawn money. The Initial Decision also opines that the account may "have been an IRA account from which petitioner was required to take annual withdrawals." ID at 4. However, the record contains no explanation offered by Petitioner or her relatives as to the nature of the withdrawals or the account. For the reasons that follow I hereby REVERSE the Initial Decision regarding the \$8,500 transfer.

There is no indication that this Prudential account was an IRA. Indeed the transactions in this account make it impossible to make such an assumption. Mandatory withdrawals are required at age 70 ½. Petitioner was 81 years old in 2011 and the account, which shows transactions from January 2009 through May 2012, contains no other withdrawals during that time period. R-1 at C. See generally http://www.irs.gov/publications/p590/ch01.html#en_US_2013_publink1000230720.

Moreover, the deposit of \$8,000 on June 13, 2011 cannot be considered a return of the \$8,500 since the two withdrawals that total \$8,500 occurred months before and after the \$8,000 deposit. The most Petitioner could have returned in June 2011 was the \$3,500 withdrawal in February 14, 2011. Additionally, Petitioner is not permitted to make contributions if the account was indeed an IRA. See IRS Publication 590, supra. ("Contributions cannot be made to your traditional IRA for the year in which you reach age 70½ or for any later year.") While not explained the timing of the transactions does not support that the \$8,500 was returned. It is Petitioner's burden to demonstrate that the funds were not transferred to qualify for Medicaid and I FIND that she has failed to carry that burden. Thus, I hereby ADOPT in part and REVERSE in part the Initial Decision as set forth above.

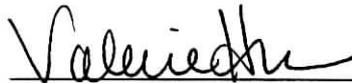
THEREFORE, it is on this ^{23rd} day of MARCH 2015,

ORDERED:

That the Initial Decision is hereby ADOPTED with regard to the transfer of
\$24,490.03;

That the Initial Decision is hereby REVERSED with regard to the transfer of
\$8,500; and

~~That Petitioner's penalty shall remain \$33,490.03 as calculated by Morris County.~~



Valerie J. Harr, Director
Division of Medical Assistance
and Health Services